

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDWARD BANKS,

Plaintiff,

- against -

MCGLYNN, HAYS & CO., INC., et al.,

Defendants.
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19-CV-5727 (JPO) (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This Order resolves the issues raised by Plaintiff in his letter dated April 28, 2021 (Dkt. 241).

1. **Facebook Posts:** Plaintiff asks the Court to “preclude” admission of Plaintiff’s own Facebook posts regarding use of term “nigga.” As Defendants correctly point out in reply, this issue and the related request to preclude (see below) are properly subjects of trial motions in limine to be handled at a later juncture. In reply, however, Plaintiff pivots, framing his request in terms of asking for a protective order against use of Plaintiff’s Facebook posts at the upcoming continuation of his deposition. As the case stands at the present time, the Court agrees that the relevancy of the posts is slim to none. Given the extent to which discovery has been drawn out, the limited nature of the continuation of Plaintiff’s deposition (i.e., redirect), the degree of relevancy, and the issues involved, the Court finds that permitting questioning about the Facebook posts at the continuation of Plaintiff’s deposition would not be proportional for the case. Accordingly, Defendants may not ask Plaintiff about the Facebook posts. This Order is not a decision as to whether

or not the Facebook posts may be used at trial such as on cross-examination, which, as noted, is an issue for another day.

2. **Deposition of Jennifer Cancel:** Whether or not Ms. Cancel should be precluded as a witness on summary judgment or at trial is not for the Court to determine at this juncture. Accordingly, this request is denied without prejudice to a later application at the appropriate juncture.

3. **Expert Discovery:** By **May 10, 2021**, the parties shall inform the Court whether they will be offering any expert testimony, and, if so, on what subject matter.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', written over a horizontal line.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: April 29, 2021
New York, New York

Copies transmitted this date to all counsel of record.